

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-95-3901; FR-3878-N-01]

## NOFA for Fair Housing Initiatives Program; FY 1995 Competitive Solicitation

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Notice of Funding Availability (NOFA).

**SUMMARY:** This NOFA announces the availability of up to \$14,580,530 of 1995 Fiscal Year (FY) funding for the Fair Housing Initiatives Program (FHIP). This program assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. In the body of this document is information concerning the purpose of the NOFA, eligibility, available amounts, selection criteria, how to apply for funding, and how selections will be made.

**DATES:** An application kit for funding under this Notice will be available following publication of the Notice. The actual application due date will be specified in the application kit. However, applicants will be given at least 70 days from today's date, until June 20, 1995, to submit their applications. Applications will be accepted if they are received on or before the application due date, or are received within 7 days after the application due date, but with a U.S. postmark or receipt from a private commercial delivery service (such as Federal Express or DHL) that is dated on or before the application due date.

**ADDRESSES:** To obtain a copy of the application kit, please write the Fair Housing Information Clearinghouse, Circle Solutions, Inc., 8201 Greensboro Drive, Suite 600, McLean, VA 22102 or call the toll-free number 1-800-343-3442 (voice) or 1-800-290-1617 (TDD). Please also contact this number if information concerning this NOFA is needed in an accessible format.

**FOR FURTHER INFORMATION CONTACT:** Sharon Bower, Acting Director, Office of Fair Housing Initiatives and Voluntary Programs, Room 5234, 451 Seventh Street SW., Washington, DC 20410-2000. Telephone number (202) 708-0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708-0800. (These are not toll-free numbers.)

## SUPPLEMENTARY INFORMATION:

### Paperwork Reduction Act Statement

Application requirements associated with this program have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3054(h)), and assigned OMB control number 2529-0033.

### I. Purpose and Substantive Description

#### (a) Authority

Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601-19 (Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate action with State and local agencies administering fair housing laws and to cooperate with, and render technical assistance to, public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616 note, established the Fair Housing Initiatives Program (FHIP) to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

Three general categories of activities were established at 24 CFR part 125 for FHIP funding under section 561 of the Housing and Community Development Act of 1987: The Administrative Enforcement Initiative, the Education and Outreach Initiative, and the Private Enforcement Initiative. Section 905 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102-550, approved October 28, 1992), amended section 561 by adding specific eligible applicants and activities to the Education and Outreach and Private Enforcement Initiatives, as well as an entirely new Fair Housing Organizations Initiative.

More significantly, section 905 has established FHIP as a permanent program. As originally promulgated by section 561, FHIP was a demonstration program authorized to expire on September 30, 1992. Since this

demonstration period has passed, and FHIP is now a permanent program, the Department has determined that the requirements specifically tied to the demonstration period, namely, the testing guidelines at § 125.405, are no longer applicable to FHIP. Accordingly, the use of these testing guidelines is not required under this NOFA. The Department has executed a waiver of § 125.405 for the purposes of this NOFA, pending the elimination of this provision in the revision of 24 CFR part 125. Because section 905 does not eliminate any FHIP provisions other than those related to its status as a demonstration program, the Initiatives and activities currently eligible under 24 CFR part 125 remain eligible under this NOFA.

This NOFA further incorporates the HCDA 1992 section 905 FHIP additions to the extent of including the new eligible applicants and activities, and the new Fair Housing Organizations Initiative. The Department solicited public comment on the amendment of 24 CFR part 125 to effect the changes made by section 905 in a proposed rule published in the **Federal Register** on August 29, 1994 (59 FR 44596). For the purpose of future funding rounds, the Department will soon publish a rule finalizing the policies and procedures contained in the August 29, 1994 proposed rule. However, applications for FY 1995 funds will be subject to the requirements and deadlines in this NOFA. Eligible applicants should not wait for the final rule's publication to prepare and submit their FY 1995 applications in response to this NOFA.

Two of the new eligible applicants, fair housing enforcement organizations and qualified fair housing enforcement organizations, are given specific definitions, which apply to this NOFA, in section 905:

*Fair housing enforcement organization* means any organization that—

- (1) Is organized as a private, tax-exempt, nonprofit, charitable organization;
- (2) Is currently engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and
- (3) Upon the receipt of FHIP funds will continue to be engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.

*Qualified fair housing enforcement organization* means any organization, whether or not it is solely engaged in fair housing enforcement activities, that—

(1) Is organized as a private, tax-exempt, nonprofit, charitable organization;

(2) Has at least 2 years experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and

(3) Is engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims at the time of application for FHIP assistance.

On October 5, 1994, HUD published a Notice (59 FR 50763) inviting comments from potential applicants for FY 1995 FHIP funds, prior grantees and applicants, and any other interested parties, on the administration of FHIP funding. HUD was especially interested in soliciting comments on the application procedures for funding in general and the content of FHIP NOFAs in particular. By the expiration of the comment period on November 11, 1994, thirty-six comments had been received. HUD is grateful for these comments and has considered them in the development of the FY 1995 FHIP NOFA and Application Kit.

The program components of FHIP are described in the Catalog of Federal Domestic Assistance at 14.408, Administrative Enforcement Initiative; 14.409, Education and Outreach Initiative; 14.410, Private Enforcement Initiative; and 14.413, Fair Housing Organizations Initiative.

#### (b) Allocation Amounts

For FY 1995, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (approved September 28, 1994, Pub. L. 103-327) (95 App. Act) appropriated \$26,000,000 for the FHIP program. Of this amount, \$9,962,024 will be used to fund the second year of FY 1993/1994 multi-year awards. An additional \$1,457,446 is being utilized for the FY 1995 funding of FY 1994 awards. The remaining \$14,580,530 is being made available on a competitive basis to eligible organizations that submit timely applications and are selected in response to this NOFA. The funding selections will be made on the basis of criteria for eligibility, factors for award, and completeness of budget information.

The full cost of FY 1995 multi-year awards, under the Private Enforcement Initiative and for the purpose of establishing new organizations under the Fair Housing Organizations Initiative, will be funded from FY 1995 funds. Recipients of FY 1993/1994 multi-year awards may not apply for FY

1995 multi-year funds in the initiative under which they are currently funded. Recipients of FY 1993/1994 and FY 1995 multi-year awards will again be able to apply for such funds in the last fiscal year of their multi-year award.

The Department retains the right to shift funds between the FHIP Initiatives listed below, within statutorily prescribed limitations. The amounts included in this NOFA are subject to change based on fund availability. The total FY 1995 appropriation for the FHIP program is divided among the four FHIP Initiatives as follows:

(1) *Administrative Enforcement Initiative*. The amount of 3 million in FY 1995 funds is available under this NOFA for the Administrative Enforcement Initiative.

(2) *Education and Outreach Initiative*. The amount of \$6,750,000 in FY 1995 funds is being used for the Education and Outreach Initiative. Of this amount, \$3,119,749 is made available under this NOFA for National Education and Outreach Initiative programs. An additional \$3.5 million in FY 1995 funds is made available under this NOFA for regional, local, and community based programs. Furthermore, \$130,251 will be utilized for the FY 1995 funding of FY 1994 awards.

(3) *Private Enforcement (PE) Initiative*. The amount of \$9 million in FY 1995 funds is being used for the PE Initiative. Of this amount, \$3,015,299 is made available under this NOFA for four-year projects, with an award cap of \$600,000 and with incremental funding during the life of the award subject to periodic performance reviews. An additional \$5,330,928 will be used to fund the second year of FY 1993/1994 multi-year awards and \$653,773 will be utilized for the FY 1995 funding of FY 1994 awards.

Recipients of FY 1993/1994 multi-year PE Initiative awards may not apply for multi-year PE Initiative funds made available under this NOFA. Recipients of FY 1993/1994 and FY 1995 multi-year PE Initiative awards will again be able to apply for such funds in the last fiscal year of their multi-year award. Therefore, FY 1993/1994 multi-year PE Initiative grantees, whose current grant will not expire until August, 1996 or later, may not apply for multi-year PE Initiative funds until the FY 1996 FHIP solicitation. Recipients of FY 1995 four-year PE Initiative awards must wait until the FY 1999 FHIP solicitation to apply for further multi-year PE Initiative funds.

(4) *Fair Housing Organizations (FHO) Initiative*. The amount of \$7,250,000 in FY 1995 funds is being used for the FHO Initiative. Of this amount,

\$1,945,482 is being made available under this NOFA. The amount of \$945,482 is made available under this NOFA for the continued development of new organizations. The amount of \$1 million in FY 1995 funds is available for three-year projects for the purpose of establishing new organizations, with an award cap of \$500,000 and with incremental funding during the life of the award subject to periodic performance reviews.

An additional \$673,422 will be utilized for the FY 1995 funding of FY 1994 FHO Initiative awards for the continued development of existing organizations. Furthermore, \$4,631,096 in FY 1995 funds will be used to fund the second year of FY 1993/1994 FHO Initiative awards for the purpose of establishing new organizations.

Recipients of FY 1993/1994 multi-year awards for the purpose of establishing new organizations under the FHO Initiative may not apply for FY 1995 multi-year FHO Initiative funds. Recipients of FY 1993/1994 and FY 1995 multi-year FHO Initiative awards will again be able to apply for such funds in the last fiscal year of their multi-year award. Therefore, FY 1993/1994 multi-year FHO Initiative grantees, whose current grant will not expire until August, 1996 or later, may not apply for multi-year FHO Initiative funds until the FY 1996 FHIP solicitation. Recipients of FY 1995 four-year FHO Initiative awards must wait until the FY 1999 FHIP solicitation to apply for further multi-year FHO Initiative funds.

#### (c) Eligibility

Eligible activities, eligible applicants, and additional requirements under each Initiative are listed below. All activities and materials funded by FHIP must be reasonably accessible to persons with disabilities.

##### (1) Administrative Enforcement Initiative

(i) *Eligible applicants*. The Administrative Enforcement Initiative provides funding to State and local fair housing agencies administering fair housing laws certified by the Secretary as providing rights and remedies that are substantially equivalent to those provided in the Fair Housing Act. A State or local fair housing agency, to be eligible to participate in the Administrative Enforcement Initiative, must be certified by the Assistant Secretary as substantially equivalent under 24 CFR part 115, or have entered into an agreement with the Department for interim referrals, as provided in 24 CFR 115.11.

(ii) *Eligible activities.* Funding will be available to support enforcement and compliance activities conducted by eligible State and local agencies. Eligible activities may include (but are not limited to) the following:

(A) Projects that focus on the areas of mortgage lending, insurance redlining, and appraisal practices;

(B) Discovering and providing remedies for discrimination in the public and private real estate markets and real estate-related transactions, including, but not limited to, the making or purchasing of loans, the provision of other financial assistance for sales and rentals of housing, including insurance redlining and appraisal practices, and housing advertising;

(C) Implementing fair housing testing and other related enforcement activity programs;

(D) Conducting investigations of systemic discrimination for further enforcement processing by State or local agencies, or for referral to HUD and the Department of Justice; and

(E) Developing new procedures to increase the efficiency of operations, such as the use of computers for case processing, tracking, and Home Mortgage Disclosure Act (HMDA) analysis.

(iii) *Additional requirements.*

(A) Testers in testing activities funded with Administrative Enforcement Initiative funds must not have prior felony convictions or convictions of crimes involving fraud or perjury, and they must receive training or have demonstrated experience in testing procedures and techniques.

(B) *Term of contract.* Administrative Enforcement Initiative funding is only available for one-year projects, which may be for up to eighteen months in duration.

(C) Projects that appear to be aimed solely or primarily at research or data-gathering unrelated to existing or planned fair housing enforcement programs will not be approved. Data-gathering activities will require OMB approval under the Paperwork Reduction Act before commencement of the activity.

(D) No recipient of assistance under the Administrative Enforcement Initiative may use any funds provided by the Department for the payment of expenses in connection with litigation against the United States.

(E) *Case tracking log requirement.* Recipients of funds under the Administrative Enforcement Initiative shall be required to record, in a case tracking log (or Fair Housing Enforcement Log) to be supplied by

HUD, information appropriate to the funded project relating to the number of complaints of discrimination received; the basis of these complaints; the type and number of tests utilized in the investigation of each allegation; the time for case processing, including administrative or judicial proceedings; the cost of testing activities and case processing; and case outcome or relief provided. The recipient must agree to make this log available to HUD.

(2) *Education and Outreach Initiative*

(i) *Eligible applicants.* The following types of organizations are eligible to receive funding under the Education and Outreach Initiative:

(A) State or local governments;

(B) Qualified fair housing enforcement organizations (QFHO-Es);

(C) Fair housing enforcement organizations (FHO-Es);

(D) Public or private non-profit organizations or institutions and other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices;

(E) Fair Housing Assistance Program (FHAP) Agencies—State and local agencies funded by the Fair Housing Assistance Program (FHAP); and

(F) Community Housing Resource Boards (CHRBs).

(ii) *Eligible activities.* (A) *In general.* Each application for Education and Outreach Initiative funding must identify if it proposes a national, Fair Housing Month, regional or local, or community-based program. The kinds of activities that may be funded through this Initiative may include (but are not limited to) the following:

(1) Projects that focus on informing persons with disabilities, and/or their support organizations and service providers, housing providers, and the general public on the rights of disabled persons under the Fair Housing Act and on the location or availability of accessible housing or the modification of non-accessible housing;

(2) Projects that provide guidance to housing providers on meeting their Fair Housing Act obligation to make reasonable accommodations for persons with disabilities are also encouraged;

(3) Projects that will provide housing, mortgage lending, appraisal, and insurance counseling services;

(4) Developing informative material on fair housing rights and responsibilities;

(5) Developing fair housing and affirmative marketing instructional material for educational programs for national, regional and local housing industry groups;

(6) Providing educational seminars and working sessions for civic associations, community-based organizations, and other groups;

(7) Developing educational material targeted at persons in need of specific or additional information on their fair housing rights;

(8) Developing national, regional or local media campaigns regarding fair housing;

(9) Bringing housing industry and civic or fair housing groups together to identify illegal real estate practices and to determine how to correct them;

(10) Designing specialized outreach projects to inform all persons of the availability of housing opportunities;

(11) Developing and implementing a response to new or more sophisticated practices that result in discriminatory housing practices;

(12) Developing mechanisms for the identification of, and quick response to, housing discrimination cases involving the threat of physical harm;

(13) Developing and implementing school curriculums for fair housing courses;

(14) Developing and implementing a response to community opposition to the location of residential facilities for persons with disabilities, as defined under the Fair Housing Act, where supportive health or human services are provided in connection with the housing; and

(15) Developing materials and providing technical assistance to support compliance with housing adaptability and accessibility guidelines contained in the 1988 Fair Housing Amendments Act.

(16) Fair Housing Month activities which may be components of national, regional, local, or community based programs.

(B) *National programs.* (1) Activities eligible to be funded as national programs shall be designed to provide a centralized, coordinated effort for the development and dissemination of fair housing media products that may appropriately be used on a nationwide basis, including:

(i) Public service announcements, both audio and video;

(ii) Television, radio and print advertisements;

(iii) Posters; and

(iv) Pamphlets and brochures.

(2) National program applications will receive a preference of up to ten additional points if they:

(i) Demonstrate cooperation with real estate industry organizations (up to five points); and/or

(ii) Provide for the dissemination of educational information and technical

assistance to support compliance with the housing adaptability and accessibility guidelines contained in the Fair Housing Amendments Act of 1988 (up to five points).

(C) *Regional and local programs.* (1) Activities eligible to be funded as regional or local programs include any of the activities, to be implemented on a regional or local level, listed in paragraphs I.(c)(2)(ii)(A) and I.(c)(2)(ii)(B)(1), above, of this NOFA.

(2) For the purposes of this NOFA, activities that are "local" in scope are activities that are limited to a single unit of general local government, meaning a city, town, township, county, parish, village, or other general purpose political subdivision of a State. Activities that are "regional" in scope are activities that cover adjoining States or two or more units of general local government within a State.

(3) Every regional or local program application must include as one of its activities a procedure for referring persons with Fair Housing complaints to State or local agencies, private attorneys, or HUD and the Department of Justice for further enforcement processing.

(D) *Community-based programs.* (1) Activities eligible to be funded as community-based programs include any of the activities, to be implemented on a community-based level, listed in paragraphs I.(c)(2)(ii)(A) and I.(c)(2)(ii)(B)(1), above, of this NOFA. Community-based programs include school, church and community presentations, conferences or other educational activities.

(2) Activities that are "community-based" in scope are those which are focused on a particular neighborhood within a unit of general local government.

(3) Every community-based program application must include as one of its activities a procedure for referring persons with Fair Housing complaints to State or local agencies, private attorneys, or HUD and the Department of Justice for further enforcement processing.

(4) Projects for community-based activities proposed by community-based organizations will receive a preference of five additional points. For the purposes of this NOFA, a community-based organization is an organization whose members primarily come from a particular neighborhood within a unit of general local government.

(iii) *Additional requirements.* The following requirements are applicable to all applications under the Education and Outreach Initiative:

(A) All projects must address or have relevance to housing discrimination based on race, color, religion, sex, handicap, familial status or national origin.

(B) Projects may range in length from six to eighteen months in duration.

(C) Projects that appear to be aimed solely or primarily at research or data-gathering will not be approved. Data-gathering activities will require OMB approval under the Paperwork Reduction Act before commencement of the activity.

(3) *Private Enforcement (PE) Initiative*

(i) *Eligible applicants.* Organizations that are eligible to receive FY 1995 funding assistance under the PE Initiative are:

(A) Qualified fair housing enforcement organizations.

(B) Fair housing enforcement organizations with at least 1 year of experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.

(ii) *Eligible activities.* Applications are solicited for four year project proposals as described in 24 CFR 125.403 and in this NOFA. Applications may designate up to 20% of requested funds to promote awareness of the services provided by the project, but such promotion must be necessary for the successful implementation of the project. Project applications may involve:

(A) Discovering and providing remedies for discrimination in the public and private real estate markets and real estate-related transactions, including, but not limited to, the making or purchasing of loans, the provision of other financial assistance for sales and rentals of housing, including insurance redlining and appraisal practices, and housing advertising;

(B) Conducting investigations of systemic housing discrimination for further enforcement processing by State or local agencies, or for referral to private attorneys or to HUD and the Department of Justice;

(C) Professionally conducting testing or other investigative support for administrative and judicial enforcement;

(D) Linking fair housing organizations regionally in enforcement activities designed to combat broader housing market discriminatory practices;

(E) Establishing effective means of meeting legal expenses in support of litigation of fair housing cases;

(F) Testing and other investigative activities, including building the capacity for housing investigative

activities in unserved or underserved areas;

(G) Building the capacity to investigate, through testing and other investigative methods, housing discrimination complaints covering all protected classes, including persons with mental and physical disabilities;

(H) Carrying out special projects, including the development of prototypes to respond to new or sophisticated forms of discrimination against persons protected under title VIII, such as in the areas of independent living and architectural barriers;

(I) Providing funds for the costs and expenses of litigation, including expert witness fees.

(iii) *Additional requirements.*

(A) Testers in testing activities funded with PE Initiative funds must not have prior felony convictions or convictions of crimes involving fraud or perjury, and they must receive training or be experienced in testing procedures and techniques.

(B) Four-year projects must be for forty-eight months in duration, with an award cap of \$600,000 and with incremental funding during the life of the award subject to periodic performance reviews. Recipients of multi-year PE Initiative awards may not apply for additional multi-year PE Initiative funds until the last fiscal year of their multi-year award.

(C) Projects that appear to be aimed solely or primarily at research or data-gathering unrelated to existing or planned fair housing enforcement programs will not be approved. Data-gathering activities will require OMB approval under the Paperwork Reduction Act before commencement of the activity.

(D) In accordance with 24 CFR 125.404, no recipient of assistance under the PE Initiative may use any funds provided by the Department for the payment of expenses in connection with litigation against the United States.

(E) Recipients of funds under the Private Enforcement Initiative shall be required to record, in a case tracking log (or Fair Housing Enforcement Log) to be supplied by HUD, information appropriate to the funded project relating to the number of complaints of discrimination received; the basis of these complaints; the type and number of tests utilized in the investigation of each allegation; the time for case processing, including administrative or judicial proceedings; the cost of testing activities and case processing; and case outcome or relief provided. The recipient must agree to make this log available to HUD.

(4) *Fair Housing Organizations (FHO) Initiative.*

(i) *Purpose: Continued Development of Existing Organizations.*

(A) *Eligible applicants.* Eligible applicants for funding under this purpose of the FHO Initiative are:

(1) Qualified fair housing enforcement organizations;

(2) Other private nonprofit fair housing enforcement organizations; and

(3) Nonprofit groups organizing to build their capacity to provide fair housing enforcement.

(B) *Eligible activities.* Eligible activities for funding under this purpose of the FHO Initiative are any activities listed as eligible under the Private Enforcement Initiative in section I.(c)(3)(ii) of this NOFA and carried out as one-year projects.

(C) *Additional requirements.* The following requirements apply to activities funded under the Continued Development of Existing Organizations purpose of the FHO Initiative:

(1) *Operating budget limitation.* Funding under this purpose of the FHO Initiative may not be used to provide more than 50 percent of the operating budget of a recipient organization for any one year. For purposes of the limitation in this paragraph, *operating budget* means the applicant's total planned budget expenditures from all sources, including the value of in-kind and monetary contributions, in the year for which funding is sought.

(2) *Term of contract.* One-year projects may be for up to eighteen months in duration.

(ii) *Purpose: Establishing New Organizations.*

(A) *Eligible applicants.* Organizations that are eligible to receive FY 1995 funding assistance for the purpose of establishing new organizations under the FHO Initiative are:

(1) Qualified fair housing enforcement organizations.

(B) Fair housing enforcement organizations with at least 1 year of experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.

(B) *Eligible activities.* Eligible for funding under this purpose of the FHO Initiative are three-year projects that help establish, organize, and build the capacity of fair housing enforcement organizations in the targeted unserved and underserved areas identified in sections I.(c)(4)(ii)(C), or other underserved areas identified by the applicant in accordance with section I.(c)(4)(ii)(D), below, of this NOFA. The Department has considered a number of factors to identify the targeted areas

eligible for funding under this NOFA, including, for example, the amount of funds available; the lack of substantially equivalent state or local agencies, or private enforcement groups; and the presence of large concentrations of protected classes. In future NOFAs, the Department will consider additional targeted areas for funding.

(C) *Targeted areas.*

(1) A preference of ten additional points will be given for applications that propose to establish new fair housing enforcement organizations in localities within any of the following unserved areas:

- (i) New Hampshire;
- (ii) Puerto Rico; and
- (iii) Wyoming.

(2) A preference of five additional points will be given for applications that propose to establish new fair housing enforcement organizations in localities within any of the following underserved areas:

- (i) Alabama;
- (ii) Delaware;
- (iii) Oregon; and
- (iv) Utah.

(3) An applicant may seek funding to establish a new organization in a locality not included in the list of target areas, above, but in such a case, the applicant must submit sufficient evidence to establish the proposed area as being currently underserved by fair housing enforcement organizations and as containing large concentrations of protected classes. An applicant may provide additional evidence of the need to establish a fair housing organization in a locality by citing data and studies that indicate the presence of housing discrimination and/or segregation in the locality. An example of evidence that may be used for this purpose is provided in (but is not limited to) the study, *American Apartheid: Segregation and the Making of the Underclass*, by Nancy A. Denton and Douglas S. Massey (Harvard University Press, 1993).

(D) *Additional requirements.* The following requirements apply to activities funded under the Establishing New Organizations purpose of the FHO Initiative:

(1) *Term of contract.* Three-year projects must be thirty-six months in duration, with an award cap of \$500,000 and with incremental funding during the life of the award subject to periodic performance reviews. Recipients of multi-year awards for the purpose of establishing new organizations under the FHO Initiative may not apply for additional multi-year FHO Initiative funds until the last fiscal year of their multi-year award.

(iii) *Additional Requirements.* The following requirements apply to all activities funded under the Fair Housing Organizations Initiative:

(A) Testers in testing activities funded with FHO Initiative funds must not have prior felony convictions or convictions of crimes involving fraud or perjury, and they must receive training or be experienced in testing procedures and techniques.

(B) Projects that appear to be aimed solely or primarily at research or data-gathering unrelated to existing or planned fair housing enforcement programs will not be approved. Data-gathering activities will require OMB approval under the Paperwork Reduction Act before commencement of the activity.

(C) No recipient of assistance under the FHO Initiative may use any funds provided by the Department for the payment of expenses in connection with litigation against the United States.

(D) Recipients of funds under the FHO Initiative shall be required to record, in a case tracking log (or Fair Housing Enforcement Log) to be supplied by HUD, information appropriate to the funded project relating to the number of complaints of discrimination received; the basis of these complaints; the type and number of tests utilized in the investigation of each allegation; the time for case processing, including administrative or judicial proceedings; the cost of testing activities and case processing; and case outcome or relief provided. The recipient must agree to make this log available to HUD.

(d) *Selection Criteria/Ranking Factors*

(1) *Selection Criteria for Ranking Applications for Assistance*

In addition to the preference points indicated in section I.(c) for particular activities, all projects proposed in applications will be ranked on the basis of the following criteria for selection:

(i) *The anticipated impact of the project proposed on the concerns identified in the application.* (20 points) In determining the anticipated impact of the proposed project, HUD will consider the degree to which a proposed project addresses problems and issues that are significant fair housing problems and issues, as explained in the application, or based upon other information available to HUD. (The clarity and thoroughness of the project description can be considered in this determination.) This criterion will be judged on the basis of the applicant's submissions in response to paragraph III.(a)(1) of this NOFA under the

heading "Checklist of Application Submission Requirements."

(ii) *The extent to which the project will provide benefits in support of fair housing after funded activities have been completed.* (20 points) In determining the extent to which the project will provide benefits after funded activities have been completed, HUD will consider the degree to which the project will be of continuing use in dealing with housing discrimination after funded activities have been completed. This criterion will be judged on the basis of the applicant's submissions in response to paragraph III. (a)(6) and III.(a)(7) of this NOFA under the heading "Checklist of Application Submission Requirements."

(iii) *The extent to which the project will provide the maximum impact on the concerns identified in a cost-effective manner.* (20 points) In determining the extent to which the project will provide the maximum impact on the concerns identified in a cost effective manner, HUD will consider the quality and reasonableness of the proposed activities, timeline and budget for implementation and completion of the project. HUD will consider as well the adequacy and clarity of proposed procedures to be used by the agency for monitoring the progress of the project and ensuring its timely completion. These procedures may consist of a system for checking whether or not the milestones established by the project's timeline are being met. The applicant's capability in handling financial resources (e.g., adequate financial control procedures, accounting procedures) will be taken into account as part of the assessment. This may be evidenced by the applicant's financial management of previous FHIP or other civil rights project management, a certification from the cognizant auditor, and other documentation. This criterion will be judged on the basis of the applicant's submissions in response to paragraphs III.(a)(2), and III.(a)(5) of this NOFA under the heading "Checklist of Application Submission Requirements."

(iv) *The extent to which the applicant's professional and organizational experience will further the achievement of project goals.* (30 points) In determining the extent to which the applicant's professional and organizational experience will further the achievement of the project's goals, HUD will consider the applicant's experience in formulating and carrying out programs to prevent or eliminate discriminatory practices, including the applicant's management of past and current FHIP or other civil rights

projects, the experience and qualifications of existing personnel identified for key positions, or a description of the qualifications of new staff that will be hired, including subcontractors/consultants. For organizations submitting an application under the Education and Outreach Initiative, HUD will consider both fair housing experience and experience in implementing education, outreach or public information programs. This criterion will be judged on the basis of the applicant's submissions in response to paragraph III.(a)(3) of this NOFA under the heading "Checklist of Application Submission Requirements."

(v) *The extent to which the project utilizes other public or private resources that may be available.* (10 points). Both monetary and in-kind resources identified in the application are eligible for determining the extent to which other public or private resources are available. The resources that will be considered must be targeted specifically for the proposed project, and must be over and above the resources available to the applicant as a part of its usual, non-project operations for such expenses as salaries, equipment, supplies, and rent. This criterion will be judged on the basis of the applicant's submissions in response to paragraph III.(a)(4) of this NOFA under the heading "Checklist of Application Submission Requirements."

#### (2) Selection Process

Each application for funding will be evaluated competitively, and awarded points based on the Selection Criteria for Ranking Applications for Assistance identified in section I.(d)(1) of this NOFA. The final decision rests with the Assistant Secretary or designee. After eligible applications are evaluated against the factors for award and assigned a score, they will be organized by rank order. The rank ordering will be done separately for: each Initiative; each program component (national, regional/local, and community-based) of the Education and Outreach Initiative; or each purpose (continued development of existing organizations, and establishing new organizations) under the Fair Housing Organizations Initiative. Awards for each Initiative will be funded in rank order until all available funds have been obligated, or until there are no acceptable applications.

#### (3) Cost Factors

The Department expects to fund multiple applications as a result of this NOFA. At some point, however, two or more complete and eligible

applications, after evaluation against the Selection Criteria, may be considered equal in technical merit. At that point, the project's cost will become the deciding factor. Furthermore, an applicant's proposal will not be funded when costs are determined to be unrealistically low or unreasonably high.

#### (4) Applicants Limited to a Single Award

Applicants may apply for funding for more than one project or activity, however applicants are limited to a single award under this NOFA. If more than one eligible application is submitted by an applicant and is within funding range, the Department will select the award that is most favorable to both the applicant and the Department. In such cases, the Department will select the application that proposes a project or activity for the greatest length of time. If all such applications from the applicant are for the same duration, the Department will select the application that represents the largest funding award.

#### (5) Independence of Awards

Each project or activity proposed in an application must be independent and capable of being implemented without reliance on the selection of other applications submitted by the applicant or other applicants.

#### (e) Applicant Notification and Award Procedures

##### (1) Notification

No information will be available to applicants during the period of HUD evaluation, except for notification in writing to those applicants that are determined to be ineligible or that have technical deficiencies in their applications that may be corrected. Selectees will be announced by HUD upon completion of the evaluation process, subject to final negotiations and award.

##### (2) Negotiations

After HUD has ranked the applications and made an initial determination of applicants whose scores are within the funding range (but before the actual award), HUD may require that applicants in this group participate in negotiations to determine the specific terms of the cooperative or grant agreement. In cases where it is not possible to conclude the necessary negotiations successfully, awards will not be made.

If an award is not made to an applicant whose application is in the initial funding threshold because of an

inability to complete successful negotiations, and if funds are available to fund any applications that may have fallen outside the initial funding threshold, HUD will select the next highest ranking applicant and proceed as described in the preceding paragraph.

### (3) Funding Instrument

HUD expects to award a cost reimbursable or fixed-price cooperative or grant agreement to each successful applicant. HUD reserves the right, however, to use the form of assistance agreement determined to be most appropriate after negotiation with the applicant.

### (4) Reduction of Requested Grant Amounts and Special Conditions

HUD may approve an application for an amount lower than the amount requested, fund only portions of an application, withhold funds after approval, and/or require the grantee to comply with special conditions added to the grant agreement, in accordance with 24 CFR part 85.12, the requirements of this NOFA, or where:

- (i) HUD determines the amount requested for one or more eligible activities is unreasonable or unnecessary;
- (ii) The application does not otherwise meet applicable cost limitations established for the program;
- (iii) The applicant has requested an ineligible activity;
- (iv) Insufficient amounts remain in that funding round to fund the full amount requested in the application and HUD determines that partial funding is a viable option;
- (v) The applicant has demonstrated an inability to manage HUD grants, particularly Fair Housing Initiatives Program grants; or
- (vi) For any other reason where good cause exists.

### (5) Performance Sanctions

A recipient failing to comply with the procedures set forth in its grant agreement will be liable for such sanctions as may be authorized by law, including repayment of improperly used funds, termination of further participation in the FHIP, reduction or limitation of further funding for administrative enforcement activities, and denial of further participation in programs of the Department or of any Federal agency.

## II. Application Process

An application kit is required as the formal submission to apply for funding. The kit includes information on the Management Work Plan and Budget for

activities proposed by the applicant. An application may be obtained by writing the Fair Housing Information Clearinghouse, Circle Solutions, Inc. 8201 Greensboro Drive, Suite 600, McLean, VA 22102, or by calling the toll free number 1-800-343-3442 (voice) or 1-800-290-1617 (TDD). To ensure a prompt response, it is suggested that requests for application kits be made by telephone.

Completed applications are to be submitted to Sharon Bower, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Room 5234, 451 Seventh Street, SW., Washington, DC 20410.

The application due date will be specified in the application kit. However, applicants will be given at least 70 days from today's date, until June 20, 1995, to submit their applications. Applications will be accepted if they are received on or before the application due date, or are received within 7 days after the application due date, but with a U.S. postmark or receipt from a private commercial delivery service (such as, Federal Express or DHL) that is dated on or before the application due date.

The application deadline is firm as to date. In the interest of fairness to all competing applicants, the Department will treat as *ineligible for consideration* any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. A transmission by facsimile machine ("FAX") will not constitute delivery.

An applicant may apply for funding for more than one project or activity, but a separate application must be submitted for each of the following categories of funding:

- (1) Administrative Enforcement Initiative activities;
- (2) National programs under the Education and Outreach Initiative;
- (3) Regional or local activities under the Education and Outreach Initiative;
- (4) Community-based activities under the Education and Outreach Initiative;
- (5) Four-year projects under the Private Enforcement Initiative;
- (6) Continued Development of Existing Organizations activities under the Fair Housing Organizations Initiative; and
- (7) Three-year projects under the Fair Housing Organizations Initiative for Establishing New Organizations.

Although a separate application is required for each funding category, an application may propose more than one

type of eligible activity under each category. For example, both production and distribution of a public service message may be proposed in a single application for a national program under the Education and Outreach Initiative.

Applicants must submit all information required in the application kit and must include sufficient information to establish that the application meets the selection criteria set forth in section I.(d), above, of this NOFA.

## III. Checklist of Application Submission Requirements

(a) *General requirements.* The application kit will contain a checklist of application submission requirements to complete the application process. Each application for FHIP funding must contain the following items:

(1) A description of the activities proposed for funding, and the practice or practices at the community, local, regional or national level that have adversely affected the achievement of the goal of fair housing, and that will be addressed by the proposed activities. This description must include a discussion and analysis of the housing practices identified, including available information and studies relating to discriminatory housing practices and their historical background, and relevant demographic data indicating the nature and extent of the impact of the described practices on persons seeking dwellings or services related to the sale, rental or financing of dwellings, in the general location where the applicant proposes to undertake activities;

(2) A budget—which must include \$5,000 per year—to be used for travel and associated costs for training sponsored or approved by the Department—and a timeline for the implementation of the proposed activities, consisting of a description of the specific activities to be conducted with FHIP funds, the geographic areas to be served by the activities, any reports to be produced in connection with the activities, the cost of each proposed activity and a schedule for the implementation and completion of the activities;

(3) A description of the applicant's experience in formulating or carrying out programs to prevent or eliminate discriminatory housing practices or in implementing other civil rights programs, the experience and qualifications of existing personnel identified for key positions, or a description of the qualifications of new

staff to be hired, including subcontractors/consultants;

(4) A statement indicating the need for FHIP funding in support of the proposed project and an estimate of other public or private resources that may be available to assist the proposed activities;

(5) A description of the procedures to be used by the applicant for monitoring the progress of the proposed activities and the applicant's planned or implemented financial control procedures that will demonstrate the applicant's capability in managing financial resources;

(6) A description of the fair housing benefits that successful completion of the project will produce, and the indicators by which these benefits are to be measured;

(7) A description of the degree to which the project will be of continuing use in dealing with housing discrimination after funded activities have been completed; and

(8) HUD Form 2880, Applicant Disclosures;

(9) A listing of any current or pending grants or contracts, or other business or financial relationships or agreements, to provide training, education, and/or self-testing services between the applicant and any entity or organization of entities involved in the sale, rental, advertising or provision of brokerage or lending services for housing. The listing must include the name and address of the entity or organization; a brief description of the services being performed or for which negotiations are pending; the dates for performance of the services; and the amount of the contract or grant. This listing must be updated during the grant negotiation period, at the end of the grant term, and for grants that will run for more than twelve months, at the end of the twelfth month.

(10) The applicant must submit a certification and disclosure in accordance with the requirements of section 319 of the Department of the Interior Appropriations Act (Pub. L. 101-121, approved October 23, 1989), as implemented in HUD's interim final rule at 24 CFR part 87, published in the **Federal Register** on February 26, 1990 (55 FR 6736). This statute generally prohibits recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. If warranted, the applicant should include the Disclosure of Lobbying Activities form (SF-LLL).

(11) Prior to award execution, successful applicants must submit a certification that they will comply with the certification requirements contained in the application kit.

(b) *Additional Education and Outreach Initiative requirements.* In addition to meeting the application requirements contained in section III.(a), above, all proposals under the Education and Outreach Initiative must include the following:

(1) A description of how the activities or the final products of the projects can be used by other agencies and organizations and what modifications, if any, would be necessary for that purpose.

(2) Coordination of activities. Each non-governmental applicant for funding under the Education and Outreach Initiative that is located within the jurisdiction of a State or local enforcement agency or agencies administering a fair housing law that has been certified by the Department under 24 CFR part 115 as being a substantially equivalent fair housing law must provide, with its application, documentation that it has consulted with the agency or agencies to coordinate activities to be funded under the Education and Outreach Initiative. This coordination will ensure that the activities of one group will minimize duplication and fragmentation of activities of the other. Failure to submit the documentation required by this section will be treated as a technical deficiency in accordance with section IV., below, of this NOFA.

(3) Every regional/local or community-based program application must include as one of its activities a procedure for referring persons with Fair Housing complaints to State or local agencies, private attorneys, or HUD and the Department of Justice for further enforcement processing.

(c) *Additional Private Enforcement Initiative requirements.* In addition to meeting the application requirements contained in section III.(a), above, all proposals for testing under the Private Enforcement Initiative must include:

(1) Documentation that the applicant has at least one year of experience in carrying out a program to prevent or eliminate discriminatory housing practices, and has sufficient knowledge of fair housing testing to enable the applicant to implement a testing program successfully;

(2) A certification providing that the applicant will not solicit funds from or seek to provide fair housing educational or other services or products for compensation, directly or indirectly, to any person or organization which has

been the subject of testing by the applicant during a 12 month period following the test.

(d) *Additional Fair Housing Organizations Initiative requirements.* In addition to meeting the application requirements contained in section III.(a), above, the following application submission requirements apply to proposals under the Fair Housing Organizations Initiative:

(1) Each applicant under the continued development of existing organizations purpose of the Fair Housing Organizations Initiative must submit an operating budget that describes the applicant's total planned expenditures from all sources, including the value of in-kind and monetary contributions, in the year for which funding is sought. This operating budget will be used for the purposes of determining the extent of the 50% funding limitation on operating expenses.

(2) All proposals for testing under the Fair Housing Organizations Initiative must certify that the applicant will not solicit funds from or seek to provide fair housing educational or other services or products for compensation, directly or indirectly, to any person or organization which has been the subject of testing by the applicant during a 12 month period following the test.

#### **IV. Corrections to Deficient Applications**

Applicants will not be disqualified from being considered for funding because of technical deficiencies in their application submission, e.g., an omission of information such as regulatory/program certifications, or incomplete signatory requirements for application submission.

HUD will notify an applicant in writing of any technical deficiencies in the application. The applicant must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency.

The 14-day correction period pertains only to non-substantive, technical deficiencies or errors. Technical deficiencies relate to items that:

1. Are not necessary for HUD review under selection criteria/ranking factors; and
2. Would not improve the substantive quality of the proposal.

#### **V. Other Matters**

##### *Prohibition Against Lobbying Activities*

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of

Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients and subrecipients of assistance exceeding \$100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

#### *Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR Part 50 which implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410.

#### *Executive Order 12606, The Family*

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the policies announced in this Notice would not have a significant impact on the formation, maintenance, and general well-being of families except indirectly to the extent of the social and other benefits expected from this program of assistance.

#### *Executive Order 12612, Federalism*

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this Notice will not have federalism implications and, thus, are not subject to review under the Order. The promotion of fair housing policies is a recognized goal of general benefit without direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

#### *Drug-Free Workplace Certification*

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Thus, each applicant must certify that it will comply with drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

#### *Accountability in the Provision of HUD Assistance*

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published at 57 FR 1942 additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

*Documentation and public access requirements* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

*Disclosures* HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in

accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

#### *Section 103 HUD Reform Act*

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR Part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by Part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR Part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708-3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

#### *Section 112 HUD Reform Act*

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912) as 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the

final rule, particularly the examples contained in Appendix A of the rule.

**Authority:** 42 U.S.C. 3601-3619; 42 U.S.C. 3616 note.

Dated: March 20, 1995.

**Roberta Achtenberg,**

*Assistant Secretary for Fair Housing and Equal Opportunity.*

[FR Doc. 95-8784 Filed 4-10-95; 8:45 am]

BILLING CODE 4210-28-P